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In the
Supreme Court of the United States
October Term, 1994

JOHN L. HOLAHAN, JR.,
as Chair of the Minnesota Ethical Practices Board;
HUBERT H. HUMPHREY III,
as Attorney General of the State of Minnesota,
Petitioners,

v.

SCOTT DAY, Treasurer of IMPACE-MEA; et al.,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

BRIEF OF RESPONDENT JACQUELINE A. SCHWIETZ IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Whether a state statute intended to discourage the non-candidate independent expenditures of three "special interest" groups by granting increased spending limits and public subsidies to candidates targeted by independent expenditures impermissibly restricts the protected speech of the non-candidate making the independent expenditures.

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STATEMENT OF THE CASE

Introduction

This case involves a successful First Amendment challenge to campaign finance law amendments adopted by the 1993 Minnesota legislature at the specific urging of the governor. The amendments were intended to restrict independent expenditures by three "special interest" groups whose collective non-candidate spending through their political funds accounted for 86.8% of all independent expenditures in Minnesota in the 1992 state legislative election year. The legislation sought to achieve that result in two ways. First, by providing for notice, increased spending limits and public subsidies to candidates against whom independent expenditures are made, the amendments were designed to discourage independent expenditures. Second, by limiting contributions to political funds to $100 per year, the amendments sought to restrict non-candidate political funds in raising money with which to make independent expenditures.

The Eighth Circuit sustained constitutional challenges to both of the means chosen to restrict independent expenditures. The State now seeks review of the court's decision with respect to one of them--the independent expenditure amendments.[1] The Petition should be denied because (1) it does not meet the criteria of Rule 10, (2) this case has no national implications, on the record made below, (3) the Eighth Circuit's decision is consistent with existing precedent, and (4) the ill-considered statutory framework has left the State unable to implement the public subsidy provision and therefore renders it unlikely that this Court would reach the

[1] Both the district court and the Eighth Circuit struck down the $100 contribution limit, and the State does not seek review on that issue.

merits of the First Amendment issues if the Petition were granted.

The Proceedings Below

This action was commenced in the District of Minnesota on December 20, 1993 by the Respondent Jacqueline A. Schwietz, as Treasurer of Minnesota Citizens Concerned for Life Committee for State Pro-Life Candidates ("MCCLCSPC") and others.[2] The Complaint challenged 1993 amendments to Minnesota's Ethics in Government Act, Minn. Stat. § 10A.01 *et seq.* ("Ethics Act") imposing a $100 limit on contributions by individuals to non-candidate political funds, Minn. Stat. § 10A.27, subd. 12, and providing for notice, increased spending limits and public subsidies to candidates against whom independent expenditures are made, Minn. Stat. §§ 10A.20, subd. 6b and 10A.25, subd. 13.[3] The Complaint named as Defendants Vanne Owens Hayes, as Chair of the State Ethical Practices Board,[4] and Hubert H. Humphrey III, the State Attorney General ("State").

On May 27, 1994, the district court granted judgment to the Plaintiffs declaring unconstitutional and enjoining enforcement of the $100 contribution limit to political funds,

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[2] Two separate actions were commenced in the district court and were considered and decided jointly by the court. Three separate appeals and a cross-appeal were taken from the district court's decision, and were consolidated by the Eighth Circuit.

[3] The Complaint also challenged amendments to Minnesota's Fair Campaign Practices Act, Minn. Stat. § 211B.01, *et seq.*, governing contributions and independent expenditures by non-profit corporations, Minn. Stat. § 211B.15, subds. 2, 3 and 15. The Eighth Circuit struck down those provisions, and the State does not seek review of the underlying issues.

[4] John L. Holahan, Jr. was later substituted as Chair of the Board.

but granted judgment to the State in all other respects, including the independent expenditure issues. [App. at A69.][5]

On June 3, 1994, MCCLCSPC filed a Notice of Appeal to the Eighth Circuit. The appeal was expedited by the court because of the imminence of Minnesota's September 13, 1994 primary election.

On September 1, 1994, the Eighth Circuit affirmed the district court's invalidation of the $100 contribution limit, reversed the district court on the independent expenditure issues and other issues, and remanded the cases for the entry of judgment in the Plaintiffs' favor on all issues. Day v. Holahan, 34 F.3d 1356 (8th Cir. 1994).

On November 30, 1994, the State filed its Petition for a Writ of Certiorari.

Organization and Fundraising of MCCLCSPC

MCCLCSPC is a non-candidate political fund registered with the State Ethical Practices Board under Minn. Stat. § 10A.14. MCCLCSPC obtains its funds solely through contributions from individuals, including members of Minnesota Citizens Concerned for Life, Inc., a non-profit corporation ("MCCL") and others who share MCCLCSPC's political views. MCCLCSPC solicits contributions from MCCL's approximately 24,000 member-families by renting MCCL's mailing list and using it to make mail and telephone solicitations. During the period from January 1, 1990 through December 31, 1992 (1990 and 1992 were general election years in Minnesota), MCCLCSPC received contributions from approximately 7,000 individuals totalling $295,453. [Affidavit of Jacqueline A. Schwietz at 2, ¶¶ 3, 4; Second Affidavit of Jacqueline A. Schwietz at 3, ¶ 4.]

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[5] The State's Appendix is referred to herein as "App." and the MCCLCSPC's Appendix is referred to as "R. App."

Independent Expenditures of MCCLCSPC

During the same period, MCCLCSPC made expenditures in support of, and in opposition to, statewide and legislative candidates totalling $264,995. Virtually all of these expenditures were "independent expenditures" as defined in Minn. Stat. § 10A.01, subd. 10b. Typically, acting independently of candidates and their campaigns, MCCLCSPC supports or opposes particular candidates by circulating literature, running newspaper or radio ads and conducting "get out the vote" campaigns, all directed at pro-life voters. [Affidavit of Jacqueline A. Schwietz at 2-3; Exs. A-C.]

MCCLCSPC prefers making independent expenditures to making direct contributions to candidates because MCCLCSPC and its supporters believe that their funds are more effectively spent in conveying their own pro-life and anti-abortion message, and in targeting their own membership and other pro-life voters, than in contributing funds to candidates who may not give similar emphasis to, or even discuss, the abortion issue during the course of their campaigns. [Second Affidavit of Jacqueline A. Schwietz at 9; Affidavit of Eileen Angell at 2.]

Independent Expenditures
in Minnesota Elections

MCCLCSPC is one of three principal makers of independent expenditures in Minnesota elections. The other two are the Minnesota Education Association's political fund, the Respondent IMPACE-MEA, and the National Rifle Association's political fund, NRA Political Victory Fund ("NRA"). [Second Affidavit of Jacqueline A. Schwietz at 7, ¶ 12.]

In the 1990 statewide and legislative election year, these three political funds collectively accounted for $241,140 of

$394,963, or 61%, of all independent expenditures reported to the Ethical Practices Board by a total of 34 political funds, committees and party committees.[6] The 34 committees reporting independent expenditures during 1990, in turn, represented less than 5% of the 483 political committees and political funds, and 313 political party committees, filing reports with the Board. [Affidavit of Caryn S. Glover, Ex. D.]

In the 1992 legislative election year, MCCLCSPC, IMPACE-MEA and NRA accounted for $287,788 of $331,672, or 86.8%, of all independent expenditures reported to the Board by a total of 16 funds and committees.[7] The 16 committees reporting independent expenditures, in turn, represented only 2% of the 435 political committees and political funds, and 353 political party committees, filing reports with the Board. [Affidavit of Caryn S. Glover, Ex. C.]

Independent expenditures likewise represent a minuscule percentage of political spending in Minnesota, whether viewed as contributions to candidates or as expenditures on behalf of, or in opposition to, candidates. Contributions to candidates for statewide and legislative office in the 1990 election year totalled $12.9 million. [Affidavit of Caryn S. Glover, Ex. D.] If all independent expenditures are added to, and included in, that total, they represent only 2.5% of political contributions to statewide and legislative candidates. Total expenditures by statewide and legislative candidates in 1990 were $14,082,796. [Id.] If independent expenditures are added to,

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[6] MCCLCSPC alone reported $163,129 in independent expenditures, or 41.3% of the total. IMPACE-MEA reported $44,584, and NRA $33,426. [Second Affidavit of Jacqueline A. Schwietz at 7, ¶ 12; Affidavit of Caryn S. Glover, Ex. A.]

[7] MCCLCSPC reported $84,467, IMPACE-MEA $153,807 and NRA $49,514. [Second Affidavit of Jacqueline A. Schwietz at 7, ¶ 12; Affidavit of Caryn S. Glover, Ex. A.]

and included in, that total, they represent only 2.3% of campaign spending.

Contributions to legislative candidates in the 1992 election year totalled $6,521,344. [Affidavit of Caryn S. Glover, Ex. C.] If aggregate independent expenditures are added to, and included in, that total, they represent only 5.7% of contributions. Total expenditures by legislative candidates in 1992 were $9,154,943. [Id.] If independent expenditures are added to, and included in, that total, they represent only 4.1% of campaign spending.

All of the foregoing information was known or readily available to the legislature and the governor when the amendments to the Ethics Act were adopted in 1993.

Legislative History of
The Public Subsidy
Provision

Contrary to the impression sought to be created by the State (Pet. 4-7), the concept of giving public subsidies to candidates against whom independent expenditures are made, Minn. Stat. § 10A.25, subd. 13(c), was not the product of a bipartisan "task force," and was not part of either of two major campaign reform proposals presented to the 1993 Minnesota legislature. One of the proposals was sponsored by Common Cause, the other by State Senator John Marty. The Common Cause proposal contained no provisions regulating or restricting independent expenditures. The Marty bill contained provisions similar to those ultimately enacted as Minn. Stat. §§ 10A.20, subd. 6b and 10A.25 subds. 13(a) and (b), requiring notice of independent expenditures to the Board within 24 hours of a political fund becoming obligated to make them, and increasing the expenditure limits of candidates affected by independent expenditures, but contained no provision regarding public subsidies for affected candidates.

The public subsidy provision was offered as an amendment to the Common Cause proposal in the House by Representative Kathleen Blatz on March 8, 1993, and as an amendment to the Marty bill by Senator Marty on the following day. [R. App. at A-3.] The Joint House/Senate Conference Committee deleted Marty's increased expenditure limit and public subsidy provisions from the bill on May 2, 1993, and rejected an offer by Senator Marty to reduce the matching public subsidy from 100% to 50% of an independent expenditure. The House and Senate then passed the Conference Committee bill. [Id.] On May 11, 1993, the bill was vetoed by Governor Arne Carlson, who delivered a strongly-worded message attacking the legislature's failure "to provide for any response to special interest independent expenditures." [R. App. at A-28.]

Four days later Senator Marty successfully moved to substitute the vetoed bill for another bill, with the only substantive revisions in the vetoed bill being the addition of an increased expenditure limit provision and a 50% public subsidy for candidates affected by independent expenditures. With that amendment, the bill passed the House and the Senate on the same day, was signed by Governor Carlson and became effective on May 21, 1993. [R. App. at A-4, 22.]

Legislative Intent of The
Public Subsidy Provision

The legislative purpose ascribed by the State to the 1993 independent expenditure amendments in the Petition is at least the third different justification it has advanced in this litigation. [Pet. 6-7, 26-7.] However, the State's present rationale--to provide an additional "incentive" to candidates to participate in the scheme of public financing--has absolutely no basis in the

record.[8] The entire legislative discussion of the public subsidy provision centered around its sponsor's firm conviction that if his amendments were adopted, independent expenditures would be dramatically curtailed because political funds would effectively be discouraged from making them.

During a Senate Finance Committee meeting on April 17, 1993 and during full Senate consideration on April 20, 1993, the discussions focused on two principal concerns which Senator Marty believed were addressed by his public subsidy provision. The first concern was that if contributions by political funds, or PACs, to candidates were severely limited,[9] without restricting independent expenditures, a "loophole" would be left for PACs seeking a way around the contribution limit, i.e., the opportunity afforded to make unlimited independent expenditures. The second major concern was that the unrestricted ability of PACs to make independent expenditures late in the campaign against candidates who had agreed to spending limits as a condition of becoming eligible

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[8] In fact, as the Eighth Circuit said: "One could hardly be faulted for concluding that this compelling state interest was contrived for purposes of this litigation." 34 F.3d at 1361.

[9] As previously indicated, the purpose of limiting contributions to political funds to $100 was to restrict the ability of political funds to raise money to make independent expenditures. Senator Marty, whose bill at one time also proposed a total prohibition on contributions by political funds to candidates receiving public financing, said that even with such a prohibition a $100 contribution limit to political funds was necessary to curtail independent expenditures. "Why do we need [the $100 limit] if we're banning PAC contributions to candidates? It's simply back to the independent expenditure issue." And, again, "I think that [the $100 limit] is very helpful in terms of addressing some people trying to use it as a loophole in the spending limits through independent expenditures." [R. App. at A-23.] The legislature adopted the $100 limit on contributions to PACs, but permitted election-year contributions by individuals of $2,000 to candidates for governor and $500 to legislative candidates. Minn. Stat. § 10A.27.

for public subsidies for their campaigns would leave those candidates at a disadvantage, even if their expenditure limits were increased, because they could not raise funds through individual contributions quickly enough to respond to last minute PAC spending.

At the Senate Finance Committee meeting on April 17, in responding to questions as to why contributions to PACs were being limited, but independent expenditures would continue to be allowed, Senator Marty acknowledged that the legislature could not constitutionally restrict independent expenditures, but characterized his bill as "the next best thing" which would accomplish the same end. He said:

> There is no penalty, we are not allowed to restrict them, what we do instead is--if I make an expenditure on the behalf of your opponent, I have to report . . . when I agree to make one, that means I talk to a printer and I want you to print this brochure, you get notified of that. Your limit goes up by that amount, your public financing goes up by that amount. You then know that . . . I was going to spend $10,000 on your opponent's behalf, wherever it came from in my PAC, however I raise that money, I'm going to spend $10,000 on your opponent, you get $10,000 public money to counter that. You didn't have to fight to raise it, you didn't have any trouble raising it, you got it and realistically that's my response . . . , **I'm not going to make that expenditure because I'm not stupid.** [Emphasis added.]

[R. App. at A-14-15; Affidavit of Mary Frances Wilson, Ex. 1 at 18.]

Similarly, on April 20, 1993, in opposing another motion to delete the public subsidy provision, Senator Marty assured his colleagues that the bill's open appropriation to fund public

subsidies in response to independent expenditures was nothing to worry about:

> As far as an open appropriation and so on for this, basically what's going to happen is a lot of groups are going to decide we're not going to try and use this as a loophole around the limits because frankly the other side's going to get the money handed to them and they're going to be able to counter it and therefore maybe we don't really want to use our hard earned money on that purpose.[10]

[R. App. at A-20; Affidavit of Mary Frances Wilson, Ex. 1 at 35-36.]

The public subsidy and increased expenditure limit provisions were deleted in Conference Committee and the bill passed the House and Senate with only a notice provision for independent expenditures. Governor Carlson vetoed the bill. [R. App. at A-4, 20-1.]

The vetoed bill was returned to the legislature, amended in only one respect--the insertion of provisions granting increased expenditure limits and a 50% public subsidy to candidates targeted by independent expenditures--and passed again. This time, Governor Carlson signed the bill, subject to an unrelated line-item veto. In doing so, he noted that in the future "additional public subsidy may be justified to discourage independent expenditures by special interests . . . ." [R. App. at A-33.]

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[10] Additional examples of the legislative discussion of the public subsidy provision are contained in the Respondent's Appendix at A-4-20.

REASONS FOR DENYING THE PETITION

I. THE PETITION DOES NOT MEET THE CRITERIA OF RULE 10 AND PRESENTS NO SPECIAL AND IMPORTANT REASONS FOR DISCRETIONARY REVIEW.

The State's Petition makes no effort to meet the criterion of Rule 10.1(a) that a circuit court's decision is in conflict with the decision of another circuit "on the same matter." Instead, the State says that the decision "conflicts with First Amendment principles" articulated by this Court and other circuit courts [Pet. 17], which would not be sufficient under Rule 10 even if it were true. [See pp. 13-21, infra.] Nor did the lower court decide an important question of unsettled federal law, the only other Rule 10 criterion even remotely suggested by the State. [Pet. 17, 28.] The issues here are confined solely to the application of settled First Amendment principles to specific state statutes, on the record made below. On that record, the Eighth Circuit's decision is consistent with decisions of this Court and other circuits. Granting the Petition is therefore not warranted under the considerations governing review expressed in Rule 10.

II. THIS CASE HAS NEITHER ACTUAL NOR POTENTIAL NATIONWIDE RAMIFICATIONS.

The State's contention that this case presents an important issue of constitutional law with "potential nationwide ramifications" [Pet. 28-30] is belied by the record.[11] The

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[11] The State's suggestion that this Court's decision of the independent expenditure issues presented by Minnesota's 1993 campaign finance law amendments would "aid Congress" in dealing with "the growing national concern over independent expenditures" [Pet. 29, 30] is not only inappropriate, as a consideration governing discretionary review,

Respondents' First Amendment challenges succeeded (1) because the legislative history of the public subsidy and $100 contribution limit provisions demonstrated the dual underlying purpose of discouraging protected political speech by non-candidate political funds and crippling their ability to raise funds with which to make non-candidate expenditures, and (2) because the undisputed facts concerning the pre-existing levels of candidate participation in Minnesota's scheme of publicly financed campaigns, and the historically insignificant levels of non-candidate independent expenditures, overwhelmingly negated the post-hoc rationalizations offered by the State as the "governmental interest" allegedly advanced by the challenged amendments.

In the 1992 general election year in Minnesota 97% of all legislative candidates agreed to spending limits as a condition of receiving public subsidies for their campaigns. That level of participation existed before the 1993 amendments were adopted, which the State now says were intended to provide a further "incentive" for candidate participation. In the same election year, three "special interests" accounted for 86.8% of all independent expenditures, and their collective spending represented less than 2½% of total campaign spending in the State.

In short, the record in this case does not lend itself to drawing national implications from the Eighth Circuit's decision. Instead, as correctly perceived by the Eighth Circuit, it demonstrates vividly how narrow political considerations in

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but ludicrous in light of the record in this case. The "concern" about independent expenditures by the majority of Minnesota's legislators and its governor was not a concern over the pervasiveness of independent expenditures, or the proliferation of non-candidate political funds making independent expenditures in Minnesota elections, but rather a concern about the perceived threat to incumbency posed by the very modest spending of three "special interests."

Minnesota overcame constitutional concerns in a legislative rush to quiet three voices.

III. THE EIGHTH CIRCUIT'S DECISION THAT THE INDEPENDENT EXPENDITURE PROVISIONS CHILL THE FREE EXERCISE OF PROTECTED SPEECH IS CONSISTENT WITH EXISTING PRECEDENT.

The undeniable purpose of the independent expenditure provisions was to discourage independent expenditures by creating a disincentive for them in the form of public subsidies to candidates targeted by non-candidate speech.

The provisions were enacted to punish MCCLCSPC's exercise of its right to free speech, and they effectively discourage and deter MCCLCSPC from engaging in such protected speech. The provisions represent the Minnesota legislature's attempt to circumvent Buckley v. Valeo, and are therefore unconstitutional under well-settled First Amendment precedent.

As the Eighth Circuit concluded:

> It is clear that independent expenditures are protected speech. "Discussion of public issues and debate on the qualifications of candidates are integral to the operation of the system of government established by our Constitution. The First Amendment affords the broadest protection to such political expression. . . ." Buckley v. Valeo, 424 U.S. 1, 14, 96 S.Ct. 612, 632, 46 L.Ed.2d 659 (1976) (per curiam). It is equally clear that section 10A.25, subd. 13 infringes on that protected speech because of the chilling effect the statute has on the political speech of the person or group making the independent expenditure. As the potential "independent

> expenders" allege in their briefs (and as at least one sponsor of the legislation intended), the mere enactment of section 10A.25, subd. 13 already has prevented many if not most potential independent expenditures from ever being made. The knowledge that a candidate who one does not want to be elected will have her spending limits increased and will receive a public subsidy equal to half the amount of the independent expenditure, as a direct result of that independent expenditure, chills the free exercise of that protected speech. This "self-censorship" that has occurred even before the state implements the statute's mandates is no less a burden on speech that is susceptible to constitutional challenge than is direct government censorship. See City of Lakewood v. Plain Dealer Publishing Co., 486 U.S. 750, 757-58, 108 S.Ct. 2138, 2144, 100 L.Ed.2d 771 (1988).

34 F.3d at 1360 (footnotes omitted). The Eighth Circuit's conclusion is consistent with prior decisions of this Court.

For example, in Miami Herald Publishing Co. v. Tornillo, 418 U.S. 241 (1974) this Court held that a state statute which required a newspaper to print a reply from a candidate whose character or record had been challenged editorially by the newspaper violated the First Amendment. The Court concluded that the statute unlawfully "exacts a penalty on the basis of the content of a newspaper" in two phases. The first is exacted from the additional costs associated with printing the reply and taking up space that could have been devoted to other uses. The second phase of the penalty, this Court said, is the statute's intrusion into the rights of the speaker, the newspaper editor.

> Faced with the penalties that would accrue to any newspaper that published news or commentary

> arguably within the reach of the right-of-access statute, editors might well conclude that the safe course is to avoid controversy. Therefore, under the operation of the Florida statute, political and electoral coverage would be blunted or reduced.

418 U.S. at 257 (emphasis added). Likewise, the notion that the making of an independent expenditure will result in a subsidy to a candidate MCCLCSPC opposes is so repugnant to MCCLCSPC that it may well conclude the safe course is to refrain from making independent expenditures, or to make them at substantially reduced levels. As the Eighth Circuit held, the public subsidy provision is therefore an intrusion into MCCLCSPC's First Amendment rights, and exacts a penalty on the basis of the content of its speech.

The State contends that the challenged legislation does not implicate the First Amendment because "these laws in no way restrict the making of, or dictate the content of messages financed through, independent expenditures." [Pet. 14.] The State ignores the Eighth Circuit's conclusion that the legislation is punitive in that it attempts to discourage and deter MCCLCSPC from engaging in political speech.

The Eighth Circuit appropriately implemented a two-part test to evaluate whether legislation which burdens the exercise of political speech passes constitutional muster: 1) the legislation must serve a compelling state interest; and 2) the legislation must be "narrowly tailored" to achieve that goal. Buckley, 424 U.S. at 44-45; Burson v. Freeman, 112 S.Ct. 1846, 1851 (1992); Austin v. Michigan Chamber of Commerce, 494 U.S. 652, 666 (1990); Vote Choice, Inc. v. DiStefano, 4 F.3d 26, 32 (1st Cir. 1993). "To survive strict scrutiny . . . a State must do more than assert a compelling state interest--it must demonstrate that its law is necessary to serve the asserted interest." Burson, 112 S.Ct. at 1852.

A. THE EIGHTH CIRCUIT CORRECTLY DETERMINED THAT THE MINNESOTA STATUTE IS NOT CONTENT NEUTRAL.

This Court has applied "the most exacting scrutiny to regulations that suppress, disadvantage, or impose differential burdens upon speech because of its content." Turner Broadcasting System, Inc. v. Federal Communications Commission, 114 S.Ct. 2445, 2459 (1994). In fact, "regulations enacted for the purpose of restraining speech on the basis of its content presumptively violate the First Amendment." City of Renton v. Playtime Theatres, Inc., 475 U.S. 41, 46-47 (1986).

Although the assessment of whether a statute is content neutral is not always easy, this Court has set forth general principles for consideration, which were utilized by the Eighth Circuit. The Court has described content neutral regulations as those which "'are *justified* without reference to the content of the regulated speech.'" Renton, 475 U.S. at 48 quoting Virginia Pharmacy Board v. Virginia Citizens Consumer Council, Inc., 425 U.S. 748 (1976). More recently, this Court said "[a]s a general rule, laws that by their terms distinguish favored speech from disfavored speech on the basis of the ideas or views expressed are content-based." Turner, 114 St. Ct. at 2459.

Further, this Court has determined that regulations which impermissibly deter protected speech are not content neutral. See Pacific Gas and Electric Co. v. Public Utilities Commission of California, 475 U.S. 1 (1986); Miami Herald Publishing Co. v. Tornillo, 418 U.S. 241 (1974). In Pacific Gas, the Court held that an order of the California Public Utilities Commission which required a privately owned utility to include in its monthly billing envelopes speech of a third party with which it did not agree was not "content neutral" because access to the envelopes was limited to persons who

disagreed with the utility's views, as expressed in its newsletter. 475 U.S. at 15. "The danger that [the speaker] will be required to alter its own message as a consequence of the government's coercive action is a proper object of First Amendment solicitude, because the message itself is protected . . ." 475 U.S. at 16.

The State misperceives the Eighth Circuit's decision by characterizing it as a conclusion "that a state cannot confer a benefit on someone in response to another's protected speech." [Pet. 24.] To the contrary, the lower court viewed the statute as exacting a content-based penalty which is plainly unconstitutional. Consistent with the teachings of Turner, Miami Herald and Pacific Gas the Eighth Circuit said:

> Section 10A.25, subd. 13 singles out particular political speech -- that which advocates the defeat of a candidate and/or supports the election of her opponents -- for negative treatment that the state applies to no other variety of speech. See Burson v. Freeman, 112 S.Ct. 1846, 1850, 119 L.Ed.2d 5 (1992) ("Whether individuals may exercise their free-speech rights near polling places depends entirely on whether their speech is related to a political campaign. The statute does not reach other categories of speech . . . ."). We have no difficulty concluding that this is a statute that "by [its] terms distinguish[es] favored speech from disfavored speech on the basis of the ideas or views expressed," and thus it cannot be content-neutral. Turner Broadcasting, 114 S.Ct. at 2459.

34 F.3d at 1360-1361.

B. THE EIGHTH CIRCUIT CORRECTLY DETERMINED THAT THE CHALLENGED LEGISLATION WAS NOT NARROWLY DRAWN TO SERVE A COMPELLING STATE INTEREST.

Political expression is "at the core of our electoral process and of the First Amendment freedoms." Buckley v. Valeo, 424 U.S. 1, 39 (1976) (quoting from Williams v. Rhodes, 393 U.S. 23, 32 (1968)). Independent expenditures, as defined by Minn. Stat. § 10A.01, subd. 10b, are clearly a form of political expression, entitled to the most rigorous First Amendment protections. Buckley, 424 U.S. at 39.

The constitutionality of the 1993 amendments to Minnesota's Ethics Act restricting independent expenditures, Minn. Stat. §§ 10A.20, subd. 6b and 10A.25, subd. 13, therefore turns on "whether the governmental interests advanced in [their] support satisfy the exacting scrutiny applicable to limitations on core First Amendment rights of political expression." Id. at 44-45.

Independent expenditures, by their nature, do not carry the threat of corruption posed by large campaign contributions. This Court has said as much: "[I]ndependent advocacy does not presently appear to pose dangers of real or apparent corruption comparable to those identified with large campaign contributions." Buckley, 424 U.S. at 47. In fact, far from threatening to "corrupt" the electoral process, independent expenditures contribute to the essence of it, a wide-open, healthy and robust debate on the issues.

The State offers as the governmental interest in support of the legislation the preservation of the viability of publicly financed campaigns by encouraging candidates to accept voluntary spending limits as a condition of receiving public financing for their campaigns. [Pet. 26.] The State now characterizes this "compelling" interest as follows:

> Candidates facing the potential for unlimited independent expenditures being made against them might reject the limits for fear of being unable to respond adequately. [Id.]

As the Eighth Circuit recognized, the State's professed interest is not legitimate given the undisputed facts. Minnesota's system of publicly financed campaigns is not threatened by independent expenditures. During the two most recent publicly-financed election campaigns, 1992 and 1990, fewer than 5% of political committees and funds in Minnesota made any independent expenditures, and aggregate independent expenditures by all political committees and funds accounted for only 3.1% of total campaign spending. Second, the suggestion that "additional incentives" afforded by public subsidies occasioned by independent expenditures are necessary to encourage candidates in Minnesota to accept spending limits and public financing is preposterous. In 1992, before the independent expenditure provisions were adopted, 97% of all legislative candidates in Minnesota agreed to spending limits as a condition of receiving public subsidies. In the statewide and legislative elections of 1990, that figure was 96%. Thus, preserving the "viability" of a firmly-entrenched, unthreatened system of publicly financed campaigns by offering totally unnecessary additional "incentives" to the three or four percent of candidates who have not already embraced the system falls far short of an important or substantial governmental interest, particularly when that interest is directly related to the discouragement of political expression by non-candidate committees.[12]

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[12] Despite the State's denial in the lower court that it seeks to advance "leveling the playing field" as a governmental interest supporting the legislation, "leveling the playing field" is a necessary corollary of the unspoken "additional incentive" to which the State repeatedly refers. The "additional incentive" is money, in the form of an

Based upon this record, the Eighth Circuit understandably concluded:

> Clearly, the campaign reform legislation was not necessary to encourage candidates' involvement in public campaign financing, as participation was approaching 100% before the new campaign finance laws were passed in 1993. One hardly could be faulted for concluding that this "compelling" state interest was contrived for purposes of this litigation.

34 F.3d at 1361. The Court went on to say that even if the statutes were deemed content neutral "[t]he statute's burden on First Amendment rights does not satisfy strict, intermediate, or even the most cursory scrutiny." 34 F.3d at 1361.

Despite the indisputable record, the State again contends that "[i]f anything, the high participation rates before the enactment of the new law *heightens* the State's interest in seeing that these rates do not drop significantly as a result of the increased likelihood that more independent expenditures will be made against candidates in the future." [Pet. 27; emphasis in original.] The Eighth Circuit effectively dismissed that absurdity:

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additional public subsidy. And the purpose of the money, as acknowledged by everyone who spoke during the legislative debates, as well as by the governor, was to provide a candidate "victimized" by an independent expenditure the wherewithal to respond to an "attack" on his or her candidacy. Providing public funds to enable candidates to "respond to speech made through independent expenditures" is an effort to level the playing field whether the State will admit it or not. And, leveling the playing field when the playing field is speech, particularly political speech is not a legitimate governmental interest. Buckley, 424 U.S. at 49-50.

> To the extent that the state's brief can be read as arguing that the level of candidate participation in publicly financed campaigns may be eroded in the absence of these limitations on the speech and association rights of those who wish to make independent expenditures, the argument lacks factual support and must be regarded as wholly speculative.

34 F.3d at 1361 n.6.[13]

IV. IF THE PETITION IS GRANTED, THIS COURT IS NOT LIKELY TO REACH THE MERITS OF THE ISSUE SOUGHT TO BE RAISED BY THE STATE.

This Court should not grant a petition under circumstances where it is likely to conclude that the state statute under review cannot be implemented to achieve its intended result.

Contrary to the State's assertions [Pet. 9, n5, 12, n6], but as recognized by the Eighth Circuit [A7-8, n.2], under the present statutory framework, the public subsidy provision cannot be implemented by the Board in a manner that would serve its intended purpose of providing pre-election subsidies to candidates targeted by independent expenditures, to permit them a pre-election opportunity to respond. The State "concedes" that the statute cannot be implemented to provide pre-election subsidies in primary elections,[14] but erroneously

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[13] The pre-1990 statistics cited by the State [Pet. 27] in support of its unfounded argument are not contained in the record.

[14] The State's "concession," first made in the Eighth Circuit, was made in a last-ditch effort to save the public subsidy provision for the November 1994 general election. It was made only after the State realized that application of the statutory scheme to primary elections would produce totally arbitrary, unintended results, in that public

asserts that pre-election subsidies can be paid to targeted candidates from "the State's general fund" in general election campaigns. [Pet. 12, n.6.][15] That is not the case.

Under Minn. Stat. § 10A.25, subd. 13(c), upon receipt of a notice of an independent expenditure under Minn. Stat. § 10A.20, subd. 6b(a), the Board is directed to notify the affected candidates and to pay a public subsidy to each candidate against whom an independent expenditure has been made, "if the candidate is eligible to receive a public subsidy . . . ."

Public subsidies paid from the state elections campaign fund originate either in "party accounts" maintained for major political parties and qualifying minor parties, or in the "general account." Minn. Stat. § 10A.31. Funds in the party accounts are distributed in connection with contested primary elections, to the winners of the elections. Minn. Stat. § 10A.31, subd. 6. Funds in the general account are distributed in connection with general elections, to statewide candidates who receive at least 5% of the vote and to legislative candidates who receive at least 10% of the vote. Minn. Stat. § 10A.31, subd. 7.

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subsidies to "victims" of independent expenditures could be paid only after the elections were held, and only to winners of the primaries. Nothing in the language of the independent expenditure amendments themselves, however, and nothing in their legislative history, suggests that the statutes apply to general elections, and not to primaries. In fact, in urging appropriate legislation in his initial veto message, the governor decried the inability of a candidate to "respond to special interest independent expenditures directed against that candidate prior to a post-September 1 Primary or the General Election." The legislature adopted the provisions in question immediately thereafter.

[15] The State's assertion that the Board "has interpreted [Minn. Stat.] § 10A.25, subd. 13(c) to allow for payment of public subsidies after the primary election" is without any basis in the record. No public subsidies were paid in response to independent expenditures in Minnesota's 1994 general election campaign because of the injunction against enforcement of the provisions entered as part of the Eighth Circuit's decision.

Eligibility for a public subsidy from the general account is not determined by prior success in a primary election. Thus, even if a candidate against whom an independent expenditure is made during a general election campaign was the winner of a contested primary election, and therefore qualified for and received a public subsidy from the primary account of his political party, that candidate is not "eligible to receive a public subsidy" from the general account unless and until he or she obtains the requisite 5% or 10% of the vote in the general election, as thereafter certified by the state canvassing board. As the Eighth Circuit recognized, the Board therefore cannot implement Minn. Stat. § 10A.25, subd. 13(c) within the time period provided in it, and no pre-election subsidies can be paid prior to either primary elections or general elections, as the statutory scheme presently exists.

Finally, the Court should be aware that if the Petition is granted, the Court will also be confronted with a void-for-vagueness issue concerning the notice provision of the statute, Minn. Stat. § 10A.20, subd. 6, not addressed by the Eighth Circuit.[16] The statute requires a political fund to notify the Board and affected candidates within 24 hours after it "becomes obligated by oral or written agreement to make an independent expenditure in excess of $100 . . . ." The notice must include "a reasonable estimate of the anticipated amount."[17]

Because an "expenditure" is defined as a payment "for the purpose of influencing the nomination or election of a candidate," Minn. Stat. § 10A.01, subd. 10, the statute in effect requires notice and a reasonable estimate of anticipated

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[16] The Eighth Circuit held that the notice provision was not severable from the increased expenditure limit and public subsidy provisions and invalidated it for that reason. [App. at A14-15.]

[17] Violation of the statute is a gross misdemeanor, and subject to civil fines up to four times the amount "of which notice is required."

spending within 24 hours after a political fund becomes obligated to spend money to influence the election of a specific candidate. Given the vagaries of non-candidate spending by political funds such as MCCLCSPC, however, the determination of when (if at all) a political fund "becomes obligated" to spend money in support of or opposition to specific candidates is extremely difficult, if not impossible.

MCCLCSPC, for example, contracts for generic artwork with a graphic designer suitable for use in many races; customizes the artwork on its in-house desktop publishing to fit particular elections; changes the focus and targets of ads as information on election races is received; and contracts with printers for candidate-specific ads at unit prices based upon quantity estimates which frequently change with new information and its own limited resources.

Similarly, MCCLCSPC contracts for radio air time several weeks in advance of elections, and pays in advance, without having determined which specific candidates it will support or oppose, or whether it will actually use all the air time booked. Candidate-specific ads are developed later, as campaigns evolve, and again tentative decisions frequently change with developing campaign strategies and MCCLCSPC's resources.

In essence, a political fund may know with reasonable certainty when it has entered a contract, or has become obligated to spend money. It is far more difficult to determine when it has incurred obligations to spend money in support of or against specific candidates, and in what amount(s) it may be so obligated.

No person should be required to notify the Board and the candidates of the incurrence of obligations which may or may not ripen into "independent expenditures," and thereby trigger increased spending limits and public subsidies to opposed candidates, at the risk of being charged with criminal conduct for not having given earlier or more accurate predictions of campaign decisions before they are actually made. If this

Court grants the Petition, it is therefore likely to conclude that the notice provision is void-for-vagueness, and may not reach the merits of the issue the State seeks to present.

CONCLUSION

MCCLCSPC respectfully requests that the Petition be denied.

Date: January 5, 1995 Respectfully submitted,

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ATTORNEYS FOR RESPONDENT JACQUELINE A. SCHWIETZ, TREASURER, MINNESOTA CITIZENS CONCERNED FOR LIFE COMMITTEE FOR STATE PRO-LIFE CANDIDATES

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UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

MINNESOTA CITIZENS CONCERNED FOR LIFE, INC.; JACQUELINE A. SCHWIETZ, individually and as Treasurer of MINNESOTA CITIZENS CONCERNED FOR LIFE COMMITTEE FOR STATE PRO-LIFE CANDIDATES; EILEEN ANGELL, MITCHELL HOYT UNRUH, and LORI ERICKSON,

Plaintiffs, Civil File No. 3-93-876

v.

VANNE OWENS HAYES, in her capacity as Chair of the STATE ETHICAL PRACTICES BOARD, and HUBERT H. HUMPHREY III, in his capacity as ATTORNEY GENERAL OF THE STATE OF MINNESOTA,

Defendants.

AFFIDAVIT OF FRANK J. WALZ

STATE OF MINNESOTA)
)ss.
COUNTY OF HENNEPIN)

FRANK J. WALZ, being first duly sworn, upon oath deposes and says:

1. I am a member of the firm of Best & Flanagan, 4000 First Bank Place, 601 Second Avenue South, Minneapolis, Minnesota, and one of the attorneys for the Plaintiffs.

2. I have reviewed substantial portions of the legislative history of Senate File 25, Senate File 152, House File 163, and House File 201 which culminated in the adoption of House File 201 by the Minnesota Legislature as Chapter 318 of the 1993 Minnesota Session Laws. My review included a review of the all of the transcripts of tapes of committee meetings prepared by members of our support staff which are being submitted in conjunction with the Plaintiffs' motion for summary judgment; several additional transcripts prepared by our support staff not being submitted because their content is of no particular relevance to the issues here; the Affidavit of Nancy L. Helmich and accompanying transcript excerpts previously submitted by the Defendants; and a summary of portions of the legislative history of Chapter 318 prepared by Thomas Research.

3. Following is a brief chronology of the hearings leading up to the passage of the bill by the Legislature and its approval by the Governor, together with true and correct excerpts from the transcripts of committee meetings which relate to the independent expenditure restrictions and the $100 contribution limit to PACs being challenged by the Plaintiffs, and a brief identification of the subject matter or context of the legislative discussion.

4. Senator John Marty ("Marty") was the chief author of S.F. 25, known as the Marty bill, and later also became the chief author of H.F. 163 in the Senate. Representative Wally Sparby was the chief author of H.F. 163, the House version of what was originally known as the Common Cause proposal. S.F. 152 was the Senate version of the Common Cause proposal. The transcript excerpts which have been presented to the Court by the State with the Helmich Affidavit relate to the introduction of S.F. 152 and H.F. 163, the Common Cause proposal, and what it was intended to accomplish. While the Common Cause proposal, as originally presented, did contain a provision limiting contributions to "PACs", i.e., political committees or political funds, to $200, it contained no provisions restricting independent expenditures. The Marty bill, as originally proposed, contained provisions requiring notice of independent expenditures to the Ethical Practices Board and increasing the expenditure limits of candidates affected by independent expenditures, but contained no provision regarding public subsidies for affected candidates.

5. The concept of giving public subsidies to candidates against whom independent expenditures were made was introduced as an amendment to H.F. 163 by Representative Kathleen Blatz on March 8, 1993 [see ¶ 9, infra], and as an amendment to S.F. 25 by Senator Marty on March 9, 1993. (See ¶ 11, infra.] The Blatz amendment passed the House General Legislative, Veteran's Affairs and Elections Committee ("Elections Committee") on March 8 but was deleted by the House Committee on Economic Development, Infrastructure and Regulation Finance on March 15, 1993, and an amendment to reinstate the provision offered by Representative Blatz before the full House on April 7, 1993 failed. The Marty Amendment passed the Senate Ethics and Campaign Reform Committee ("Ethics Committee") and

survived proposed amendments to delete it in the Senate Finance Committee on April 7, and before the full Senate on April 20, 1993, the date of Senate passage of H.F. 163.

6. The Joint House/Senate Conference Committee deleted Marty's public subsidy provision from the bill on May 2, 1993, and rejected an offer by Senator Marty to reduce the matching public subsidy from 100% to 50% of an independent expenditure. The House and Senate then passed the Conference Committee bill, without the public subsidy match provision, but the bill was vetoed by Governor Carlson on May 11, 1993. (See ¶ 19, Ex. A., infra.]

7. On May 15, 1993, Senator Marty moved to amend H.F. 201 to substitute the Conference Committee report on H.F. 163, with the addition of a 50% public subsidy for candidates affected by independent expenditures. The amendment was adopted, the amended bill passed the Senate and the House, and was signed by Governor Carlson, with a line-item veto of an appropriation for an unrelated campaign subsidy, the so-called "third tier match" program. [See ¶ 20, Ex. B., infra.]

Independent Expenditure Restrictions

The following transcript excerpts relate to discussions of the independent expenditure provisions as they evolved to final passage in H.F. 201.

8. Prior to introducing the concept of a public subsidy for "victims" of independent expenditures, Senator Marty proposed an amendment to S.F. 25 which would have required a minimum of 21 days' notice prior to a primary or general election of an intent to make an independent expenditure. At the Ethics Committee meeting on March 4, 1993, the following colloquy occurred:

Senator Marty: Mr. Chairman, while it's being handed out I'll explain the amendment. This is one that I've heard from a lot of people

who I think have raised very legitimate concerns about the role of independent expenditures in a, when we are trying to set up a balanced campaign finance package that independent expenditures may be used in ways that significantly tilt the impact various groups may have on the process and this thing tries to address that in three ways. It does not, as we cannot constitutionally do, it does not try in any way to restrict people from making independent expenditures but as you know the bill already has several provisions related to these in it. One of which is that you must provide notice of any independent expenditures you are going to be making within 24 hours after you've become obligated by oral or written agreement to make that independent expenditure and then in response to that the candidate who is the victim, if you want to call it that, of an independent expenditure has their spending limit increased by the same amount that the independent expenditure organization reports to the Ethical Practices Board and to the campaigns. This goes further than that in three ways. First of all, and the first one is one that I recognize it's a free speech issue and I think the courts would recognize there's some issue near the end of a campaign, whether 21 days is the proper period or not, it would be simply saying you could make an independent expenditure after

that but you would have to give the notice at least 21 days before the primary or general election so if you were planning to make one before then you'd have to plan ahead so you could notify the other parties involved at least three weeks before an election.

Senator Luther: Senator Marty, do you think that, would that actually be constitutional to require a party to notify the Board 21 days ahead of time?

Senator Marty: Mr. Chairman, I discussed this at some length with Senate counsel and we recognized that this, I obviously, we put it down to a shorter period of time, say 14 days or something, there would be a, probably a greater probability that the court would recognize that it's not an undue burden for somebody. They could still make the expenditure after that but to provide the notice before this period of time. And certainly I would not doubt that there'd be a good chance this would be challenged and how the courts would rule is a good question. The point is not to stop anybody from making independent expenditures, which we cannot do, but simply to say if you're going to be doing it we have a fair chance so that the political debate can continue and if you want to make an independent expenditure affecting my campaign I have a chance to respond before the end and obviously if you have

no notice or notice coming the day before the election, two days before the election, you obviously have no chance to respond. So I recognize it might be challenged.

Senator Luther: I thought free speech just plain required that if you, the day before the election if you're a group out there and you want to do something and send out a flyer the day before the election I thought you just could do that. Senator Marty.

Senator Marty: Mr. Chairman, there's, I'm sure the argument would be made that you could and obviously whether 21 days is an appropriate amount of time, certainly this is one that I recognize would likely be challenged and I would hope that the court recognize that it's not an undue burden. It is a burden of some sort. You would have to plan ahead and tell people that you are planning to make an expenditure, but that it does not restrict you from making that expenditure on the last day or anything.

[Ratliff Aff., Ex. D, pp. 1-3.] Senator Marty subsequently withdrew the proposed amendment.

9. At a meeting of the House Elections Committee on March 8, 1993, Representative Blatz offered an amendment to H.F. 163 incorporating independent expenditure notice and increased expenditure-limit provisions and a public subsidy match provision for candidates affected by independent expenditures. In introducing the amendment, she said:

What the amendment would do, I think I need to back up here. What I'm concerned about is happening a little bit now and I believe will become more likely to happen in the future is that people have a constitutional right as do groups to make expenditures on behalf of candidates that they want to promote, but we're not supposed to know about it. So if I like Chris Hasskamp up there in Crosby and she's doing a good job I could get some of my friends together, they could each kick in, I don't think there's any limits of what they can kick in, and we could let's say get $10,000 on her behalf and maybe we don't like something about a different incumbent in that district and they could work against that challenger in representative Hasskamp's behalf. Now that can happen the last two weeks of the campaign. You don't have to know anything about it. They can do direct mail, media, whatever. And that is their constitutional rights. We can't deal with that or limit it or anything like that. But I do believe we can regulate it. What this amendment does is say that if you're going to make an independent expenditure on behalf of a candidate that's in excess of $100 that you have to notify the Ethical Practices Board thirty days prior to the election and just tell them that you're going to make this expenditure. And I hope that the language also says the amount. Then the Board, and you also have to notify the candidate, the one you're doing it on behalf of and the one that you're doing it not on behalf of, and then the spending limits for the person that is not being benefited would be increased by that same

amount and they would also be able to get that amount of money from public subsidy. This amendment does say at the very end on line 24 that they would be paid 30 days after they're notified that this expenditure would be made. I would say that it should coincide, I'd like that changed, if you're willing to support the amendment, to be when they do make the disbursements to the Ethical Practices Board. I really believe that most people sitting here or challengers or anybody in a district that's really up for grabs, that has a chance of going to either party needs this-legislation. It's just totally unfair to think that any group, and I don't care what side of the aisle, I don't care who the group is, can come in and do mass mailings in your district, buy a substantial media buy and you're sitting there adhering to the campaign limits, no notification. There's, I think even with this amendment you're still at a slight disadvantage because you have to all at once react. And you know how difficult it is to get your literature when you're on a schedule planning it let alone when you get a notice that someone's going to come in with $5,000 the last week or whatever. So I think it kind of levels off the playing field, to quote Representative Gutknecht before, and I hope that together if we have to clean up the language a little bit that's fine but that we can support it.

[Ratliff Affidavit, Ex. E, pp. 60-2.]

10. Later, in support of the Blatz amendment, Representative Gil Gutknecht said:

I appreciate the fact that the author is going to try to work on this language. It isn't perfect. But I think the concept is critically important because one of the things we're trying to do with this bill is to take away the influence of the PACs and the special interest. And what is going to happen is if it's more difficult for them to make direct contributions to our campaigns or our opponents campaigns we're going to see even more independent expenditures and it's like getting hit with a baseball bat in a dark room. It's going to happen when you don't see it coming. This language may not be perfect, but we've got to do something and it needs to be in this bill because if you take away the game on one side with PACs we're just going to see even more of the independent expenditures. And really I think, that that is the thing that is going to have the most profound and most negative impact on our whole election system, so I do hope that we'll get some kind of language like this into this bill because I think it's very important.

[Id., p. 70.] The Blatz amendment passed. [Id., p. 71.]

11. On the following day, March 9, at a Senate Ethics Committee meeting, Senator Marty offered an amendment to his bill similar to the Blatz amendment, granting a public subsidy to counter independent expenditures. He said:

[T]his addresses the issue of independent expenditures. I had a provision that I said as I introduced it that I thought it had a good chance of not making it through the courts, and after the committee discussion, I decided to withdraw that part of the amendment. What remains of this, I changed one part. As you can see the bill it amends page 8 beginning on line 5 of the bill that language that an independent expenditure you have to notify the candidates involved in the race. This would not, this would simply

add a penalty for failing to give that notice and then the language on lines 10 through 13 would say instead of the system that I proposed last Thursday, this would say that it would boost the public subsidy by the amount of the independent expenditure so if you were the victim of an independent expenditure to the tune of $4,000 not only would your limit go up by $4,000 but you would be eligible for the public subsidy of that amount, an additional public subsidy. This was offered in the House yesterday by Representative Blatz. This similar kind of language as that part, and it did pass unanimously. I would have proposed this the other day, except I thought its chances in the courts were not good and Senate Counsel suggested there are some very strong arguments for this. So, that's what the amendment does.

[Ratliff Aff., Ex. F, p. 1]

12. On April 17, 1993, at a meeting of the Senate Finance Committee, in a discussion of the public subsidy provision, Senator Morse raised a question as to whether situations might not arise in which an independent expenditure is made on behalf of a candidate who did not want it, or felt it was actually detrimental to him, and yet his opponent would get a public subsidy because of it. Senator Marty responded:

> [Y]es, I think this is a very legitimate concern and this is not a perfect response to independent expenditures. I think if I had my choice on how to do it, I would do it a lot differently but the U.S. Supreme Court, 8 votes to one in terms of limiting independent expenditures and what I would make the argument is, the people who feel so strongly that they have to have some say in the process, they are still are going to have their ability to, but I think a lot of independent expenditures that are made are frankly ones that people find are a way around contribution limits

or expenditure limits and they are doing it. A lot of groups that make endorsements made independent expenditures on behalf of the people they have endorsed.

* * *

But clearly it's not a perfect response. But I would make the suggestion that very, very few of those kind of independent expenditures are going to occur.

[Wilson Aff., Ex. 1, pp. 13-14.]

13. During the same meeting, a question was raised to Senator Marty as to why H.F. 163 proposed to restrict contributions by PACs to candidates but continued to allow independent expenditures. The following colloquy then occurred:

Senator Marty: Mr. Chairman, Senator Terwilliger, either --I mean it's basically PACs that are making those independent expenditures and if they choose to do that, because we cannot--we cannot constitutionally stop them from doing that or limit them from making those expenditures, but what we do in the bill I think is the next best thing, we allow the other side to be able to respond to it by giving them the limit of money to do it. And realistically I think this will accomplish the same ends without offending the court's interpretation of what first amendment rights are.

Senator Terwilliger: Mr. Chair, to follow up on this, it seems to me what we are really saying is that it is alright for a PAC to be able to exist but put the money through an independent expenditure because we want to be constitutionally correct with the court and then it's absolutely, as far as

I'm concerned, it's kind of driven under ground. What we are doing is, kind of ignoring and saying, well it's all right to have it over here but not over here. Because if it's both the same--both same types of organization, we're attempting to control them and we say we can't so, we're--because of the public pressure of people saying well PACs are bad, I don't agree that PACs are bad. I think there are a log of good government PACs out there. I don't think it's balanced to do it this way and I think in addition to that it gets--then it gets to the next question which is--all right so if someone makes an independent expenditure on the behalf of Senator Johnson or me then our opponent gets to have that like amount put into their account. That comes to the expense of the taxpayer and I say wait a minute, I don't quite understand Mr. Chair why we should control one half of the equation without the other and then in the process drive up the federal--the state expenditure level.

Senator Marty: Mr. Chairman, I think the way it would work in practice, we would be controlling both. If I am the Marty PAC and I--whatever interest I represent, I want to give money to your campaign or everybody in this room's campaign, I can do that right now up to $1500.00. And under this bill, no you couldn't do that anymore. Supposing I'm a big PAC and I've done that in the past and everyone of you got $1500 and then on top of that if you turn around and make an independent expenditure of $5,000 additional on your behalf. What we are doing under this bill is stop the first one that's no problem to stop, we

> can do that it's a condition of public financing, we do that, then okay now instead of giving $5000 independent expenditures to everyone of you, I'm going to give $6500 in independent expenditures to everyone, that can happen under current law anyway. But realistically what's happening here, is we're saying, look if you really want to make the expenditure, you are allowed to make that expenditure. But my PAC just has to do that and presumably I don't have money coming out of my ears and just don't know what else to do with it, so it's not the easiest thing in the world for me to do that, but I believe it's worth my while to make that expenditure, then by having this counter that the bill has, I think realistically in most cases, I'm going to say, look you mean, the person I'm trying to fight, your opponent is going to be able to get that same $6500. I'm going to say forget it, I'm not going to make the expenditure.

[Id., pp. 16-17.]

14. Senator Ranum then asked Marty what the "penalty" would be for a "last minute" independent expenditure. Senator Marty responded:

> There is no penalty, we are not allowed to restrict them, what we do instead is--if I make an expenditure on the behalf of your opponent, I have to report--not when--when I agree to make one, that means I talk to a printer and I want you to print this brochure, you get notified of that. Your limit goes up by that amount, your public financing goes up by that amount. You then know that I was going to make--I was going to spend $10,000 on your opponent's behalf, wherever it came from in my PAC, however, I raise that money, I'm going to spend

> $10,000 on you opponent, you get $10,000 public money to counter that. You didn't have to fight to raise it, you didn't have any trouble raising it, you got it and realistically that's my response to Senator Terwilliger, I'm not going to make that expenditure because I'm not stupid.

[Id., p. 18.]

15. Later in the meeting, a motion was made to delete the provision granting public subsidies in response to independent expenditures. Senator Marty opposed the motion, as follows:

> Mr. Chairman I strongly oppose the motion. Let me give an example of why I think this would do real harm to the bill. We got, given the gubernatorial race for instance, we have a spending limit of 1-1/2 million dollars, we can raise it from anything other than contributions of $1,000 or less for individuals. Some group decides that because they don't like the fact that they can't any longer give any money to candidate for Governor or in a, somebody for that race, they decide they want to spend $200,000 in attack ads against the candidate for Governor in the race and that we're supposed, if this language was taken out, we'd effectively be saying to the other side, well ya know you'll get, have your chance to respond, we're going to tell you about it and you may know even a week and a half before the election. Now if you can go out and raise contributions of 1,000 bucks or less and you can raise that 200,000 bucks, in the next week and a half, and then you can design your own ads to respond to it, then you'll have the chance to respond to it. And instead of having 371,000 independent expenditures as we have had two years ago, or last year, we're going to have ten times that. I think it effectively would gut the bill. I mean I think if we're going to allow people to make unchallenged

independent expenditures, which you wold doing through this, I think you are going to have them sky rocket. I think if we leave this in the bill, what we're going to have is, is only the independent expenditures where somebody feels so much that something's missing from the debate, that they are going to use their, exercise their free speech rights. Everybody who's just using this as a loop hole around the contributions limits, is going to use it, is going to stop doing it if we have this language in the bill, but take that out and people are just going to use it as a big loop hole in the bill.

[Id., p. 39] The motion ultimately failed.

16. On April 20, 1993, H.F. 163 was considered by the full Senate. Early in the discussion, Senator Berg described independent expenditures made late in a previous campaign by MEA IMPACE and asked Senator Marty "in this bill of yours what provisions do you have to eliminate those independent expenditures and how is the opposing candidate going to compete." The following colloquy then occurred:

Senator Marty: Mr. President, Senator Berg, you raised a good question. Again I don't know specifics about any particular group's actions in terms of independent expenditures, but I agree. I think it's a very big problem now and it will remain a big problem. This bill I think does everything we can constitutionally do to address independent expenditures and I think it will do a tremendous job at addressing that problem. Basically what the bill would require of somebody who's making an independent expenditure on behalf of a candidate or in opposition to a candidate would be to disclose that they are making such an expenditure and how much they are expending on it not the day they make it but the day they become obligated to do so so in other words if somebody

goes to a printer or a newspaper and says I want to run this ad or run this brochure the day they obligate themselves to make it it would be due so you have some advance notice and then based on that advance notice the Ethical Practices Board would increase your spending limit by the amount of the money that the independent expenditure was being made for and you would receive additional public finance money to counter _____ the ability to respond to it and the money to do so.

Mr. President:

President: Senator Berg.

Senator Berg: Would Senator Marty yield further.

He'll yield.

Senator Berg: Senator Marty, under the court's decision I realize that they ruled that a person may make independent expenditures because this is the right of free speech. But have they also ruled that an organization has the right to make independent expenditures on behalf of some candidate and that this is also permissible? or could we ban organizations from using that method of financing or influencing these campaigns?

Senator Marty: Mr. President, Senator Berg, no, the court has made it pretty clear that it doesn't have to be just on an issue or something they can a group can make independent expenditures on behalf of a campaign or in opposition to a campaign. There is virtually nothing that can be said or done about that. Again, as I said, you've got kind of a perhaps some member of the finance committee referred to it as a mutually assured destruction kind of thing. If you give the other side the ability to counter it very easily

a lot of people are going to think twice about whether they really want to make those independent expenditures and as you pointed out it is a very big problem and if we don't address it it's pretty worthless to spend our time trying to tighten up on other restrictions and so on if everyone's just going to make a loophole and go around it which is why I think that's a very important provision in the bill.

[Ratliff Aff., Ex. G, pp. 3-4.]

17. Later in the discussion, the following colloquy occurred between Senators Bertram and Marty:

Senator Bertram: Mr. Chairman. Senator Marty, I had a question I wanted to ask Senator Marty if he'll yield. I would like to ask you Senator Marty relating to the individual political fund and I'd like to talk a bit about the independent expenditures and in the bill relating to the notifying of candidates, the Ethical Practices Board within 24 hours of making or becoming obligated to make an independent expenditure. And if you'll look in the bill, Senator Marty, I don't know what your purpose was but maybe you could explain it. You know [a] candidates campaign expenditures limit would increase by the amount of the independent expenditure and I'm sure you had some reason of doing that, but as I understand it and Senator Luther who is an attorney or others around you who are could probably better explain this than I can, but as I understand it that independent expenditures have been upheld by the courts and they are protected speech under the First Amendment so I understand they cannot be restricted. So Senator Marty, I would like to know why this is a part of this legislation when you know what the courts already have indicated and yet this penalizes a candidate who

has no control over the independent expenditures and maybe you can elaborate a bit on that.

Senator Marty: Mr. President, Senator Bertram. Yes, this bill does not stop, as you suggested, independent expenditures. And as you also correctly said the courts have said we cannot stop them. So we are not inconsistent with the court there. What this would do would be allow some candidate who is the unfair victim of some sort of, fair or unfair, they're the victim of a massive independent expenditure against them, Senator Berg has given us one example of a case against him, would give him the chance to respond. It doesn't stop them in any way from doing it. They may or may not choose to continue making independent expenditures, but it would give him the chance to respond. It gives candidates the ability to counter these things and get their own message out. It's not a perfect solution, but it does get a chance to respond.

[Id., p. 33.]

18. Senator Betram then moved to delete the independent expenditure provisions from the bill. In opposing the amendment, Senator Marty said:

Mr. President, Senator Bertram. You are correct, I do strongly oppose the A52 amendment and when you suggest legislation that looks good and doesn't really do anything, if you put this in this bill will do a lot more of look good than do things because frankly all the PACS and others who the bill would restrict from giving to campaigns might just turn around and decide well we can get around these contribution limits, we can get around the expenditure limits simply by making independent expenditures. And this amendment would facilitate their

doing that. As Senator Berg's pointed out and numerous others have, these independent expenditures are already out there and they're out there in fairly sizeable numbers. If people, there is, however, no limit on them in this. They are still allowed to continue it, to address the Supreme Court's concerns, it simply gives the other side the chance to respond. And what the court is looking for is free speech. This doesn't stop anybody from their right to free speech. It simply says we are going to have an informed debate and the other side is going to have the ability to respond as well. As far as an open appropriation and so on for this, basically what's going to happen is a lot of groups are going to decide we're not going to try and use this as a loophole around the limits because frankly the other side's going to get the money handed to them and they're going to be able to counter it and therefore maybe we don't really want to use our hard earned money on that purpose. And so the people who are trying not to get some new message out but who are trying to simply use it as a loophole around the limits are going to decide maybe it's not worth doing. Your amendment would cause the problems that you say that we can't deal with. We could give people the ability to respond to these attacks. We do that in the bill. I think it's carefully drafted. I think it would stand up in court. You're right, it probably will be challenged, but I think it will stand up in court. And I think it's a reasonable provision and if we take this out then we get to the position where we're just doing feel good legislation which people can get around it very simply.

[Id., pp. 35-36.] Senator Betram's motion failed on a roll call vote, and the bill passed the Senate.

19. As previously, indicated, the public subsidy provision was initially deleted from the bill by the Conference

Committee, and the bill passed both the House and Senate without it but was vetoed by the Governor. In his veto message, Governor Carlson said:

> The Legislature's failure in House File 163 to create a means by which a candidate can respond to being targeted by special interest independent expenditures has resulted in a campaign finance system that is an unconstitutional violation of a candidate's right to free speech. Pursuant to both House File 163 and current law, a candidate must agree to abide by expenditure limits and receive public subsidies on or before September 1 preceding the General Election. However, once a candidate files an agreement to be bound by the expenditure limits, he or she is locked into those expenditure limits. As a result, the candidate cannot respond to special interest independent expenditures directly targeted against the candidate prior to a post-September 1 Primary or the General Election. The failure of House File 163 to provide a candidate who agrees to public subsidy relief from expenditure limits after being targeted by special interest independent expenditures is unconstitutional as a violation of that candidate's freedom of speech.
>
> A targeted candidate must be provided the opportunity to publicly debate and contest the contents of independent expenditure attacks. The right is protected by and embodied in the free speech clause of the First Amendment to the United States Constitution and is the essence of good government. The United States Supreme Court has so mandated in a ruling in which it stated that the central purpose of that clause is "to assure a society in which 'uninhibited, robust and wide open, public debate concerning matters of public interest would thrive for only in such a society can a healthy representative democracy flourish." A system such as Minnesota's, embodied in

House File 163, which denies a candidate the right to exceed expenditure limits in order to engage in an uninhibited wide-open public debate of the issues raised by independent expenditures is both unconstitutional and contrary to sound public policy.

[A copy of the Governor's veto message is attached as Exhibit A. The quoted material appears on page 2.]

20. Senator Marty subsequently moved to amend the bill (to its present form) by providing a 50% public subsidy to candidates affected by independent expenditures; the amendment and the bill passed; and the Governor approved the bill, subject to an unrelated line-item veto. [A copy of the Governor's approval letter and line-item veto message is attached as Exhibit B.]

$100 Limitation on Contributions to PACS

The following transcript excerpts relate to discussions of the provision of H.F. 201, as finally enacted, which prohibits political committees or political funds from accepting aggregate annual contributions in excess of $100. [Minn. Stat. § 10A.27, subd. 12.]

21. On January 26, 1993, at a meeting of the Senate Ethics Committee, Senator Marty explained the $100 contribution limit of his bill as follows:[1]

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[1] At the time of this discussion, Senator's Marty bill contained a provision prohibiting all contributions by PACs to candidates who agreed to abide by spending limits. That provision was later deleted in favor of what is now Minn. Stat. § 10A.27, subd. 11, which prohibits candidates from accepting contributions from PACs and large contributors which aggregate more than 20% of the candidate's spending limits.

> Section 21 is the ban on contributions to PACs. This is one that I had in my bill as I've been working on it in the past several months I took it out because of the belief it probably would not stand the court challenge, then I saw several other proposals that felt it might withstand the court challenge so I put it back in. That would be a limitation on any contributions to a PAC of more than $100 a year. Why do we need this if we're banning PAC contributions to candidates? It's simply back to the independent expenditure issue. Again, as I said, there's some question of whether the courts would uphold this section, but I think it's again very important that we do look at the independent expenditure portion of things because I think it has been used in many ways as a loophole around spending limits.

[Ratliff Aff., Ex. A, p. 15.]

22. On February 11, 1993, at a meeting of the Senate Ethics Committee, Senator Marty further explained the $100 limit as follows:

> Again in this bill you could not give any PAC, no PAC could give money to a candidate anyway. I think that this is very helpful though in terms of addressing some people trying to use it as a loophole in the spending limits through independent expenditures. If we're going to have a policy that $100 is the maximum contribution, it seems to me that's appropriate there too. And again, the only purpose people can use these things for would be independent expenditures under this proposal.

[Ratliff Aff. Ex. C. p. 12.]

23. On March 8, 1993, at a meeting of the House Elections Committee, a representative of Common Cause, Tom Berg, was asked by Representative Gutknecht whether

the committee which formulated the Common Cause proposal had considered what could be done to limit the impact of independent expenditures. The following colloquy then occurred:

Berg: Mr. Chairman, I'll be very brief. My name is Tom Berg. I was chair of the committee that developed the legislation that Representative Sparby has. We did talk about that, excuse me, and shared your concern about that problem. That's one reason we did what we did in terms of PACs, left them in there but put the clamps down on them to try not to funnel more money into basically uncontrolled independent expenditures. That's why I think this bill is much better than the bill that Senator Marty has.

Chair: Representative Gutknecht, briefly.

Gutknecht: Mr. Chairman, Mr. Berg. Could you just, how does this do it better than Marty's bill? I mean let's say a group wants to spend $40,000 to defeat Mr. Abrams.

?: Good luck.

Chair: Mr. Berg.

Berg: We basically viewed it as, Mr. Chairman, I won't get into the details of representative Abrams election contest, but the way we approached it was is pretty much a zero sum game in politics and money and if you take it out over here it's gonna somehow pop up over here. And what you want to do is make sure you have good accountability for all of that money no matter where it goes. And what we did was saying that people have shown over the last 15, 20 years they want to participate in PACs. PACs are a

legitimate way to contribute money. The problem is they have given, they have been given or achieved arguably a too great a percentage of the amount they can give so they get too much muscle. So what we did was lower the amount you can give to a PAC, lower the amount that candidates can receive from PACs, lobbyists and big givers to reduce that special interest, if you will, from them but still allow it to happen but require full disclosure. And so you can report it better here, whereas as I understand Senator Marty's bill they totally eliminate that and our thought then will be all of that PAC money will go to what you're concerned about and we were concerned about of independent expenditures which are not disclosed as well and controlled as well under the existing law. That's why I think this bill is much better in terms of dealing with independent expenditures than the legislation that Senator Marty has proposed.

[Ratliff Aff., Ex. E, pp. 39-40.]

24. On April 20, 1993, on the Senate floor, Senator Marty was asked about the section of the bill restricting contributions to PACs. The following colloquy then occurred:

Senator Marty: Mr. President, Senator Finn, section 27 would limit the amount of contributions an individual can give to a political committee or fund.

Senator Finn: Mr. President, Senator, so I'm not sure what these political committee and funds are, you've excluded the candidate's principal campaign committee but you're apparently restricting individuals from contributing more than $50 per year. Wouldn't that be an impairment of their rights to free speech and freedom to associate and things like that

unless you've got some other kicker here that I'm not finding.

Senator Marty: Mr. President, Senator Finn, this one may be, this was both a provision in my bill and the Common Cause bill and it's one that may well be challenged. The courts have accepted contribution limits to candidates and I don't know that they've spoken specifically on the concept of limiting them to PACS.\

[Ratliff Aff., Ex. G, p. 9.] The bill ultimately passed with a $100 annual limit on contributions to PACs.

/s/ Frank J. Walz
FRANK J. WALZ

Subscribed and sworn to before
me on February 23, 1994.

/s/ Caryn S. Glover
Notary Public

STATE OF MINNESOTA
OFFICE OF THE GOVERNOR
130 STATE CAPITOL
SAINT PAUL 55155

May 11, 1993

The Honorable Dee Long
Speaker of the House
Minnesota House of Representatives
463 State Office Building
Saint Paul, Minnesota 55155

Dear Speaker Long:

I have vetoed and am returning Chapter 173, House File 163, a bill relating to campaign reform.

I am committed to, and the people of Minnesota are demanding, comprehensive electoral and ethical practices reform. I am vetoing House File 163 not to engage in debate or combat with the Minnesota Legislature. I am vetoing House File 163 because this legislation is bad for the people of Minnesota and unhealthy for all of us who believe in a democratic elective process. The objections I hold are non-partisan. The objections I hold have been answered in a federal campaign reform proposal which has been endorsed by President Clinton. Why should I accept less for the people of this state than the President is willing to accept for the people of this nation?

As I informed the legislature approximately six weeks ago, I expect any reform bill to include certain goals and principles. I have reviewed House File 163 in the light of those goals and

principles. I have also reviewed the bill as a whole to see how the provisions relate to each other and to assess its overall impact upon Minnesota's electoral process.

House File 163 has some good provisions which include the dissolution of "Friends of" committees, the elimination of transfers among candidates' campaign committees, the lowering of contribution limits, and the elimination of public subsidies for unopposed candidates. However, when viewed as a whole, assessing the overall impact of the bill, it is clear that House File 163 does not achieve comprehensive reform. There are some who will argue that a bill that reforms even a little is worthy of becoming law, following the old cliche that half a loaf is better than none at all. I must tell the people of this state that in this case, the half-loaf is moldy. This bill worsens the existing electoral process by giving the special interests who already hold undue influence, even more power than before.

The disproportionate influence of special interest groups upon Minnesota's electoral process is one of the chief problems that must be effectively addressed in any comprehensive electoral reform package. House File 163, unfortunately, empowers special interests at the expense of individual contributors and voters. By failing to provide for any response to special interest independent expenditures, and failing to ban PACs or PAC contributions while simultaneously seriously reducing individual contribution limits and establishing a low 20 percent aggregate contribution for PACs, lobbyists, and large individual contributors, the Legislature has handed over to the special interest groups the ability to control Minnesota elections. The net effect of these inter-related provisions is to drive special interest contributions from the area of regulated PAC contributions to the area of unregulated independent expenditures. It is an arrogant abuse of power marked by a

process that excluded compromise. I refuse to sign any bill that permits special interests to control Minnesota's electoral process.

The Legislature's failure in House File 163 to create a means by which a candidate can respond to being targeted by special interest independent expenditures has resulted in a campaign finance system that is an unconstitutional violation of a candidate's right to free speech. Pursuant to both House File 163 and current law, a candidate must agree to abide by expenditure limits and receive public subsidies on or before September 1 preceding the General Election. However, once a candidate files an agreement to be bound by the expenditure limits, he or she is locked into those expenditure limits. As a result, the candidate cannot respond to special interest independent expenditures directly targeted against that candidate prior to a post-September 1 Primary or the General Election. The failure of House File 163 to provide a candidate who agrees to public subsidy relief from expenditure limits after being targeted by special interest independent expenditures is unconstitutional as a violation of that candidate's freedom of speech.

A targeted candidate must be provided the opportunity to publicly debate and contest the contents of independent expenditure attacks. This right is protected by and embodied in the free speech clause of the First Amendment to the United States Constitution and is the essence of good government. The United States Supreme Court has so mandated in a ruling in which it stated that the central purpose of that clause is "to assure a society in which 'uninhibited, robust and wide open' public debate concerning matters of public interest would thrive for only in such a society can a healthy representative democracy flourish." A system such as Minnesota's, embodied in House File 163, which denies a candidate the right to

exceed expenditure limits in order to engage in an uninhibited wide-open public debate of the issues raised by independent expenditures is both unconstitutional and contrary to sound public policy.

The mere providing of notice as incorporated in House File 163 does not remedy the unconstitutional failure to provide a targeted candidate a means to respond to a special interest independent expenditure. Moreover, the notice provided in House File 163 is wholly inadequate to provide effective notice or protect against fraudulent notice.

House File 163 also fails to achieve the goal and principle of restoring integrity and parity in Minnesota's electoral process. The bill fails to provide a "level playing field" for both incumbents and challengers, for candidates of all parties plus independent candidates, and for all persons and groups who wish to express their political views in a lawful manner.

House File 163 has significant elements which provide protection for incumbents, These elements include the failure to provide pre-Primary public subsidies and the establishment of high threshold contribution amounts to be raised with low ($50 or less) contributions in order to be eligible for public subsidy. These features are unrealistic for challengers, especially when multiple challengers exist in the pre-Primary stage, and create significant advantages for incumbents.

House File 163 also creates a significant unfair advantage to candidates of major parties at the expense of independent or third-party candidates. This bias is evident in the areas such as qualification for check-off dollar public subsidies, denial of pre-Primary public subsidies, continued allowance of PAC contributions, and access to enhanced public subsidies

following an opponent's decision not to abide by spending limits.

Finally, I wish to note two areas of concern which I would like to see addressed either directly in House File 163 or as a companion to this bill. As I have travelled across our state, I have heard from citizens innumerable times the request for an opportunity to consider term limits for elected officials. I wholeheartedly endorse a referendum for term limits because I truly believe the heart of any campaign reform must deal with the temptations of protecting incumbency.

I also feel the people of this state deserve a Minnesota Legislature that does not exempt itself from the rules it promulgates for others. I believe no legislation that is called reform in any respect can omit the reference to ethics reform.

For these omissions and the concerns I have highlighted above, I am vetoing and returning to you this bill. I do so very regretfully on behalf of the citizens of this state who want and deserve elected officials who serve only for the greater good.

Because of my commitment to reform, I am unwilling to veto and return this bill to you and rely solely upon the Legislature to design a true electoral reform package. Therefore, I am today announcing that I will be appointing a bi-partisan electoral reform commission to design a true comprehensive multi-faceted electoral reform package. In order to avoid the partisanship which infected House File 163, current elected officials and officials of political parties will not be members of the commission but will be invited to offer testimony and input. It is my hope that such a commission will incorporate the good aspects of House File 163 while addressing those problems that remain, including those set forth above.

Warmest regards,

/s/ Arne H. Carlson
ARNE H. CARLSON
Governor

c: Senator Alan Spear, President of the Senate
Senator Roger Moe, Majority Leader
Senator Dean Johnson, Minority Leader
Representative Steve Sviggum, Minority Leader
Representative Wally Sparby
Senator John Marty
Mr. Patrick E, Flahaven, Secretary of the Senate
Mr. Edward A. Burdick, Chief Clerk of the House
Ms. Joan Anderson Growe, Secretary of State

VETO MESSAGE

Chapter 318, article 2, section 37, subdivision 3(b)

Dear Speaker Long:

It is my honor to inform you that I have received, approved, signed and deposited in the Office of the Secretary of State Chapter 318, House File 201 (with the exception of Article 2, Section 37, subdivision 3(b) on Page 22, Lines 7 and 8).

I have line-item vetoed the open appropriation for the third-tier match program. House File 201 distorts Common Cause's match proposal by eliminating the requirement that private matching funds be raised from within a candidate's district. Also, in reality this program would result in a 2:1 public/private match, since the political contribution refund also applies to the private matching funds.

The match program would require that an additional $1.6 to $3.5 million of public funds be paid to politicians. While additional public subsidy may be justified to discourage independent expenditures by special interests, the third-tier match is an unnecessary hand-out. The public would be outraged at this abuse of public funds.

Despite its shortcomings, this bill represents the beginning of campaign reform. The dissolution of "Friends of" committees, elimination of transfers, reduction in contribution limits, and elimination of public subsidies for unopposed candidates are encouraging first steps. The mechanism for dealing with independent expenditures and the aggregate limit on PAC contributions are incomplete solutions, and many critical elements, including term limits and ethics reform, have been

totally ignored. Accordingly, I will proceed with the bi-partisan electoral reform commission that I previously announced, and I look forward to your support in these efforts to achieve complete campaign and ethics reform.

Warmest regards,
Arne H. Carlson
Governor